



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R8-ES-2022-0027; FXES11140800000-223-FF08ECAR00]

### Endangered and Threatened Wildlife and Plants; Incidental Take Permit

### Application; Proposed Habitat Conservation Plan Amendment and Associated Documents; County of San Diego, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application for an incidental take permit (ITP) under the Endangered Species Act, and a draft habitat conservation plan amendment, from San Diego Gas & Electric. We have also prepared a draft environmental assessment under the National Environmental Policy Act.

**DATES:** We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** *Obtaining Documents:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS-R8-ES-2022-0027 at <https://www.regulations.gov>.

*Submitting Comments:* You may submit comments by one of the following methods:

- *Email:* [fw8cfwocomments@fws.gov](mailto:fw8cfwocomments@fws.gov). Please include “San Diego Gas & Electric HCP Amendment” at the beginning of your comments.
- *Hardcopy:* Submit comments by U.S. mail to: Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177

Salk Avenue, Suite 250, Carlsbad, CA 92008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from San Diego Gas & Electric (SDG&E) for an incidental take permit (ITP) through the year 2050 that would cover 41 species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). SDG&E has prepared the *Public Review Draft San Diego Gas & Electric Company Habitat Conservation Plan Amendment 2022* (HCP amendment), which would amend their 1995 *Subregional Natural Community Conservation Plan and Habitat Conservation Plan* (subregional HCP) pursuant to section 10(a)(1)(B) of the Act. The HCP Amendment includes 41 covered species, and the applicant is requesting the authorization of incidental take of the 25 covered wildlife species that could result from activities covered under the HCP amendment. The HCP amendment includes a conservation program to avoid, minimize, and mitigate for covered activities.

The HCP amendment also includes an eagle conservation plan (ECP) that SDG&E developed with the Service. The ECP provides the information required by the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668 and 50 CFR 22) and the Service’s final rule revising the regulations that govern the Service’s eagle take permit program (50 CFR 13; 50 CFR 22; and 81 FR 91494, December 16, 2016) to continue

including bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) as covered species under the HCP amendment.

In connection with the application, we have prepared a draft environmental assessment (draft EA) under the National Environmental Policy Act of 1967, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

We are requesting comments on the permit application and on the draft EA.

## **Background**

Section 9 of the Act and its implementing Federal regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. “Incidental taking” is defined as “any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out an otherwise lawful activity” (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found at 50 CFR 17.22 and 50 CFR 17.32.

## **Proposed Action**

The Service would issue an ITP to SDG&E for the amendment to its subregional HCP for certain covered activities. SDG&E has requested an ITP for 41 covered species, including 25 animals and 16 plants, of which 31 are currently listed as threatened or endangered under the Act. Implementation of the HCP amendment may result in 400 acres (ac) of permanent impacts, 210 ac of temporary impacts, and 210 ac of wildfire

fuels management impacts to habitat supporting covered species. The impacts anticipated are in addition to the 400 ac of habitat impacts authorized and mitigated under ITP No. PRT-809637 for the subregional HCP. The original ITP for the subregional HCP was set to expire in 2050, and the ITP for the HCP amendment is anticipated to have the same expiration date.

### *Plan Area*

The HCP amendment plan area has been expanded from that for the subregional HCP to include all of SDG&E's 2,815,930-ac service area in all of San Diego County and portions of Orange and Riverside Counties. The plan area includes all of SDG&E's gas and electric transmission and distribution facilities, rights-of-way, buffer lands, areas owned by SDG&E and/or subject to SDG&E easements, access routes, and those areas acquired as mitigation to offset the impacts resulting from covered activities. The total plan area includes approximately 2,021,745 ac (72 percent) of natural land cover types and 794,185 ac (28 percent) of other land cover types (e.g., agriculture, disturbed habitat, eucalyptus woodland, and urban/developed).

### **Covered Activities**

The proposed section 10 ITP would allow take of covered wildlife species resulting from covered activities in the proposed HCP amendment plan area. SDG&E is requesting incidental take authorization for covered species that could be affected by activities identified in the HCP amendment. The HCP amendment covers all SDG&E operations and maintenance (O&M), minor new construction, and wildfire fuels management that may result in take of covered species in the plan area. O&M activities occur throughout SDG&E's existing network of facilities and would occur at or near the existing facilities. Minor new construction activities include installing new or replacement structures to upgrade facilities or to extend service to new customers. Minor new construction, when in preserves or proposed preserves, is limited to 1.75 acres per

project. Impacts greater than 1.75 acres from minor new construction in preserves or proposed preserves would require a minor amendment approved by the Service as described in the HCP amendment. Minor amendments are permissible without amending the underlying section 10(a)(1)(B) permit, provided that the Service determines that the changes do not (1) result in additional incidental take of/impacts to covered species not analyzed in connection with the original HCP amendment; (2) result in operations under the HCP amendment that are significantly different from those analyzed in connection with the original HCP amendment; or (3) have adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP amendment.

### **Covered Species**

Covered species are those species addressed in the HCP amendment for which conservation actions will be implemented and for which SDG&E is seeking an ITP. Proposed covered species include the following wildlife species that are listed as threatened (T) or endangered (E) under the Act: San Diego fairy shrimp (*Branchinecta sandiegonensis*, E), Riverside fairy shrimp (*Streptocephalus woottoni*, E), Laguna Mountains skipper (*Pyrgus ruralis lagunae*, E), Hermes copper butterfly (*Lycaena hermes*, T), arroyo toad (*Anaxyrus californicus*, E), California red-legged frog (*Rana draytonii*, E), western snowy plover (Pacific Coast Population Distinct Population Segment (DPS) [*Charadrius nivosus nivosus* (*C. alexandrinus* n.), T], western yellow-billed cuckoo (*Coccyzus americanus occidentalis*, E), southwestern willow flycatcher (*Empidonax traillii extimus*, E), coastal California gnatcatcher (*Polioptila californica californica*, T), light-footed Ridgway's (=clapper) rail [*Rallus obsoletus* (=longirostris) *levipes*, E], California least tern [*Sternula antillarum browni* (*Sterna a. b.*), E], least Bell's vireo (*Vireo bellii pusillus*, E), Stephens' kangaroo rat (*Dipodomys stephensi*, T),

peninsular bighorn sheep (*Ovis canadensis nelsoni*, E), and Pacific pocket mouse (*Perognathus longimembris pacificus*, E).

The golden eagle (*Aquila chrysaetos*) and the bald eagle (*Haliaeetus leucocephalus*) are also covered species in the HCP amendment, along with other regionally sensitive wildlife species, including western spadefoot (*Spea hammondi*), western pond turtle (*Actinemys marmorata*), coast horned lizard (*Phrynosoma blainvillii*), tricolored blackbird (*Agelaius tricolor*), burrowing owl (*Athene cunicularia*), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*) and the Belding's savannah sparrow (*Passerculus sandwichensis beldingi*).

The definition of "take" in the Act does not apply to plants. However, SDG&E proposes to include federally listed plant species in recognition of the conservation benefits provided for them under the HCP amendment. For the purposes of the HCP amendment, federally listed plant species are further included to meet regulatory obligations under section 7 of the Act. SDG&E would receive assurances for all species included on the ITP under Service's "No Surprises" regulations found at 50 CFR 17.22(b)(5) and 50 CFR 17.32(b)(5). The following federally listed plant species are included as covered species in the HCP amendment: San Diego thorn-mint (*Acanthomintha ilicifolia*, T), San Diego ambrosia (*Ambrosia pumila*, E), Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*, E) Encinitas baccharis (*Baccharis vanessae*, T), thread-leaved brodiaea (*Brodiaea filifolia*), Salt marsh bird's-beak (*Chloropyron maritimum* ssp. *maritimum*, E), Orcutt's spineflower (*Chorizanthe orcuttiana*, E), Otay tarplant (*Deinandra conjugens*, T), San Diego button-celery (*Eryngium aristulatum* var. *parishii*, E), willowy monardella (*Monardella viminea*, E), spreading navarretia (*Navarretia fossalis*, T), California Orcutt grass (*Orcuttia californica*, E), San Diego mesa mint (*Pogogyne abramsii*, E), and Otay Mesa mint (*Pogogyne nudiuscula*, E).

## **National Environmental Policy Act Compliance**

The draft EA was prepared to analyze the impacts of issuing an ITP based on the HCP amendment and to inform the public of the proposed action, alternatives, and associated impacts and disclose any irreversible commitments of resources. The proposed ITP issuance triggers the need for compliance with NEPA. The proposed action presented in the draft EA is compared to the no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared.

### **Next Steps**

We will evaluate the proposed HCP amendment and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10 ITP would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an ITP. If the requirements and issuance criteria under section 10(a) are met, we will issue the ITP to SDG&E for incidental take of covered species.

### **Public Comments**

If you wish to comment on the permit application, proposed HCP amendment, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

### **Public Availability of Comments**

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal

identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**Scott Sobiech,**

*Field Supervisor,*

*Carlsbad Fish and Wildlife Office,*

*Carlsbad, California.*

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